S.B.Criminal Revision Petition No.1304/2007

Pradhuman Kumar
v.
M/s Krishi & Health Care Company

Date of Order :: 18th December, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Vinay Jain, for the petitioner.
Mr. M.P.Goswami, for the respondent.

....

An application preferred under Section 311 Cr.P.C., to summon Shri Vikas Jain, Shri Pramod Patil, Branch Manager of Allahabad Bank, Merut and Branch Manager of Allahabad Bank, Jodhpur, came to be rejected by order dated 19.11.2007 passed by learned Additional Judicial Magistrate (M.D.), Jodhpur in Complaint Case No.446/2006, hence this revision petition is preferred.

The respondent preferred a complaint as per provisions of Section 138 of the Negotiable Instruments Act against the petitioner alleging non-encashment of two cheques said to be given by the petitioner. The application under Section 311 Cr.P.C. was preferred to summon the witnesses to prove that as a matter of fact no amount was due against the petitioner and, therefore, a direction was given to stop payment relating to the cheques concerned.

The contention of counsel for the petitioner is that in the complaint itself it was categorically

stated that in presence of Shri Pramod Patil three cheques were given but out of which two cheques were dishonoured on the ground of instructions given for stopping payment in view of the fact that goods were handed over to M/s Jain Agro Industries and was taken over by Shri Vikas Jain. To prove the transaction taken place in presence of Shri Vikas Jain and Pramod Patil, it was necessary to summon them as witnesses.

Heard counsel for the parties.

It is not in dispute that Shri Pramod Patil and Shri Vikas Jain are not employees of Jain Agro Industries. Even as per cause title of the application preferred by the respondent it is apparent that Shri Pramod Patil is Manager of Samridhi Industries Ltd. Learned trial court while rejecting the application left it open for the petitioner to call Pramod Patil in defence at his own. I do not find any just reason to do so. Factually it is wrong that he is in employment of Jain Agro Industries. The petitioner or the Jain Agro Industries cannot have any control over Shri Pramod Patil. Shri Pramod Patil, therefore, is certainly required to be summoned as he is quite a relevant person in view of the fact that in the complaint itself it is stated that in his presence the goods were handed over and the case of the petitioner is that no such goods were handed over. So far as Shri Vikas Jain is concerned, he is son of the petitioner

himself, therefore, he can very well be produced in defence by the petitioner himself. No definite information is given by the petitioner relating to Branch Managers of Allahabad Bank. On basis of such incomplete information no order for those persons be given. Beside that, it is not in dispute that the cheques stood bounced, therefore, the learned trial court rightly refused to summon the Branch Managers as witnesses.

Accordingly, the revision petition is allowed in part. The order impugned dated 19.11.2007 passed by learned Additional Judicial Magistrate (M.D.), Jodhpur in Complaint Case No.446/2006 is maintained to the extent it relates to refusal to summon Shri Vikas Jain, Branch Manager of Allahabad Bank, Jodhpur and Branch Manager of Allahabad Bank, Merut, however, the same is quashed to the extent it relates to refusal of summoning Shri Pramod Patil, Zonal Manager, Samridhi Industries Ltd., J-98, M.I.D.C., Kupwad (Sangli) Maharashtra. The application preferred by the petitioner under Section 311 Cr.P.C. is accordingly allowed to the extent it relates to summon abovenamed Shri Pramod Patil.

(GOVIND MATHUR),J.

Kkm/ps.